

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

RICHMOND SANITARY SERVICE, INC.
Employer

and
TEAMSTERS UNION LOCAL NO. 315
Petitioner

Case 32-RC-254580

DECISION AND DIRECTION OF ELECTION

Richmond Sanitary Service, Inc., which does business as Richmond Sanitary Service/West County Recycle/Republic Services of Richmond and is herein referred to as the Employer, is engaged in the business of non-hazardous solid waste management and operates out of a facility located at 1A Parr Blvd. in Richmond, California, herein referred to as the Facility. The Teamsters Union Local No. 315, which is affiliated with International Brother of Teamsters, Chauffeurs, Warehousemen and Helpers of America and is herein referred to as the Petitioner, currently represents a bargaining unit of approximately 75 to 80 garbage division employees who work at the Facility. The collective-bargaining agreement between the Employer and the Petitioner covering the garbage division is effective from March 1, 2018 through February 28, 2022 (the Agreement). Petitioner seeks an *Armour-Globe* self-determination election to add 3 positions to the existing recognized garbage division unit of box drivers, front-end drivers, utility repair, drivers (residential), helpers, shop and laborer positions. The Petitioner seeks to add the following positions: (1) dispatcher (there are two dispatcher positions, but one is currently vacant); (2) operations clerk; and (3) route overage auditor.¹

The Employer maintains that the petitioned-for employees do not constitute an identifiable, distinct segment of the Employer's employees, and do not share a community of interest with the garbage division unit. The Employer also urges that placement of the petitioned-for employees into the existing unit will create a conflict of interest between the petitioned-for employees and another separately represented unit of recycling division employees. Finally, while not conceding that the three petitioned-for-employees constitute an appropriate unit under the Act, the Employer stated on the record that it would agree to allow the three petitioned-for employees to vote for representation in a separate stand-alone unit.

The Petitioner contends that the three petitioned-for employees constitute an identifiable, distinct segment of the Employer's employees, constitute an appropriate voting unit, and share a sufficient community of interest with the existing garbage division unit, such that they should be jointly represented in a single bargaining unit. The Petitioner has also indicated that it would seek to represent the petitioned-for employees in a separate unit in the event its request for an *Armour-Globe* self-determination election were denied.

¹ *Armour & Co.*, 40 NLRB 1333 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 297 (1937).

A hearing officer of the Board held a hearing in this matter on January 23, 2020. The Petitioner and the Employer appeared at the hearing and orally argued their positions prior to the close of hearing, which I have duly considered. As evidenced at the hearing, the sole issue before me is whether the three petitioned-for employees should be allowed to vote in an *Armour-Globe* election to determine if they wish to be included in the existing unit of the Employer's garbage division employees already represented by the Petitioner or if they should be allowed to vote in a stand-alone unit.

I have carefully considered the evidence and the arguments presented by the parties on this issue. For the reasons set forth below, I find that the petitioned-for employees constitute an identifiable, distinct segment of the Employer's unrepresented employees so as to constitute an appropriate voting group, and they share a community of interest with the existing unit. I am, therefore, directing a self-determination election to determine whether the petitioned-for employees seek to be included in the existing bargaining unit.

THE EMPLOYER'S OPERATIONS²

The Employer is a collection hauling company engaged in the business of collecting recycling material, organic material, and solid waste material from customers throughout West Contra Costa County, including roughly 62,000 residential customers, 3,500 commercial customers, and 1,200 industrial customers. Commercial, industrial and residential drivers collect the materials and deliver them to transfer facilities and disposal sites.

Shawn Moberg is the Employer's General Manager and oversees the entire operation and directly supervises the Employer's managerial employees. Each manager is responsible for different divisions of the operation. Janna Coverston is the Manager of Municipal Relations and oversees the Employer's contractual obligations. Bielle Moore is also the Manager of Municipal Relations and performs high level community relations and works with municipal, governmental and political bodies. Lisa Martinez Ronan is the Human Resources Manager and oversees the Employer's human resources needs. There are no employees working in the above departments and no employees reporting to these managers.

Winnie Lau is the Finance Manager and oversees the division Accountant, two credit collections employees and one billing coordinator. The division accountant performs higher-level accounting duties, such as the preparation of profit and loss reports. The credit/collections employees approve credit for businesses applying for new residential, commercial or industrial service and perform lien functions and attend lien hearings. The billing coordinator ensures the accuracy of the Employer's billing for all its residential, commercial, and industrial customers. All of the employees employed in positions in the finance department who report to Winnie Lau are unrepresented by any Union.

Angela Roof is the Customer Resource Manager and oversees the Employer's eight

² Richmond Sanitary Service, Inc. is a wholly owned subsidiary of Bay Collection Service, Inc., which is a wholly owned subsidiary of Republic Service, Inc. Republic Service is the second largest nonhazardous waste company in the United States and operates roughly 340 hauling businesses, 190 landfills, and various transfer stations throughout the country.

customer service representatives and two recycling coordinators. The customer service representatives work directly with the Employer's customers and handle all customer phone calls, walk-ins, and payments. They input customer issues or requests into the customer account and billing software program, Info Pro. These eight employees are represented by OPEIU, Local 29. The Employer's unrepresented recycling coordinators are responsible for promoting recycling and educating customers regarding recycling regulations to ensure recycling efforts meet the demands set by the State of California and each city in which the Employer operates. They also conduct customer site audits to educate customers and ensure proper recycling. They also collect and report recycling data as required under certain of the Employer's contracts.

Pete Jenkins is the Fleet Maintenance Manager and he oversees the Employer's maintenance department, which is responsible for the maintenance and repair of the Employer's equipment, including all of the Employer's residential automatic side-loader trucks, roll-off trucks (industrial), front-loader trucks (commercial), rear-load trucks (residential and commercial), pickup trucks, utility pickup trucks, utility equipment, stationary equipment, industrial containers, and large and small containers. The department operates out of the maintenance building where all of the trucks and equipment are housed and maintained. Jenkins oversees the department's early shift employees and the Employer's Maintenance Supervisor supervises the second shift mechanics. The unrepresented Maintenance Supervisor is also responsible for maintaining the department's schedules and repairs and ensuring that the necessary equipment is ready each day. The department's four heavy equipment technicians work on two shifts (an early shift and a second shift) and are responsible for repairs on the Employer's heavy-duty equipment. The two preventative maintenance technicians perform preventative maintenance work and routine regular inspections. The department's part person is responsible for maintaining the parts inventory and purchasing parts. The department's four shop laborers perform non-repair work, primarily facility maintenance. The International Association of Machinists (Machinists Union) represents the department's heavy equipment technicians, preventative maintenance technicians, parts person, and three of the shop laborers. There is one maintenance clerk who is unrepresented. The maintenance clerk is responsible for entering all of the work order data created by the maintenance technicians into the Employer's fleet management system and also facilitates the purchasing of oil and fuel inventories. One of the department's shop laborer positions is held by a container washer³ employee, and there is also a tire repair employee in the department who maintains and repairs the tires for all vehicles.⁴ These two positions work within the maintenance department and report to the maintenance manager, but are represented by the Petitioner in its garbage division bargaining unit.

Alexis Mack is the Employer's Operations Manager. She oversees the Employer's operations department, which performs all of the Employer's collection and transportation of garbage, recycling, and green waste materials. The operations department includes five operations supervisors, the three petitioned-for employees, and 90 Teamster-represented employees, including: 88 commercial, industrial, and residential garbage and recycling drivers and their helpers, one container shop laborer and one container shop welder. The operations supervisors that report to Mack are: Matt McLaughlin, David Silva, Sierra Hannah, Wayne

³ This position is also sometimes referred to as a Cart Washer.

⁴ There is substantial testimony about the tire repair employee, but the position does not appear on the organizational chart and it is unclear what the exact title of this position is.

Bonifante, and Andrea Crowe. The employees employed in these unrepresented, supervisory positions are primarily responsible for managing particular collection routes and supervising the drivers on those routes. They manage the drivers' availability, make route assignments, monitor drivers' wages and payroll, attend to any safety incidents, and investigate any accidents that occur on their routes.

Matt McLaughlin manages the Employer's green waste and recycling routes. David Silva manages all the residential garbage routes, and a few special utilities routes. Sierra Hannah manages the Employer's out of area contract with the City of Piedmont and oversees its garbage, recycling, and green waste routes. In addition to supervising the drivers and helpers on these routes, she also handles customer complaints, inquiries and special requests, and coordinates and dispatches any missed pick-ups or additional services for this service area. Wayne Bonifante manages the commercial routes and supervises drivers who operate the front-load garbage and front-load recycling vehicles. Operations Supervisor Andrea Crowe manages the Employer's industrial routes, supervises the seven box/industrial drivers, and supervises the 3 petitioned-for employees: the dispatcher, operations clerk, and route overage auditor. Finally, there is one container shop labor/container utility employee and a container shop welder/container repair employee both of whom work in the operations department under Alexis Mack and are represented by the Petitioner, but who take direction from the maintenance manager.⁵

The Petitioner represents two bargaining units working primarily out of the operations department under two separate bargaining agreements. The first is the recycling division agreement, which covers only the Employer's recycling drivers. The second collective bargaining agreement covers the Employer's garbage division bargaining unit of roughly 75 to 80 employees in the following positions: box/industrial drivers; front-end/front-loader commercial drivers; residential drivers; helpers (drivers' helpers are primarily assigned to the two-man rear-loader trucks and they work out on routes with the drivers); utility repair employees (the container welder and container delivery employee who are under the operations department but report to the Maintenance Manager, and the container washer and tire repair employees who work in the maintenance department). The unit also has a "shop" classification and a "laborer" classification, both of which are currently vacant.

THE CLASSIFICATIONS SOUGHT TO BE ADDED

1. DISPATCHER

The dispatcher works in the operations department and is supervised by Operations Supervisor Andrea Crowe. While there are two dispatcher positions, only one is currently filled. The dispatcher works in the dispatch office, which is located in the operations building, which directly abuts the maintenance building. The dispatcher works at a counter desk that has a

⁵ The record reflects that the titles of the three container employees have multiple synonyms. For example, the container shop welder is sometimes referred to as the container repair employee and falls under the contractual job title of utility repair. The container shop laborer is also sometimes referred to as the container utility, container maintenance, and container delivery employee, and also falls under the contractual job title of utility repair. The container employee working in the maintenance department uses the departmental job title of "Shop Laborer," falls under the contractual job title of utility repair but is also referred to as the container washer or the cart washer. For clarity, I will refer to them as the container welder, the container delivery employee, and the container washer, respectively.

window that opens to the driver area in the maintenance building which allows the dispatcher to speak with drivers in the driver area. The dispatcher works Monday through Friday from 8:30 a.m. to 5:30 p.m. and earns \$26.30 an hour. The dispatcher uses a phone, the same type of radio as the drivers, and a computer with access to Info Pro, the computer system used by the Employer to maintain account and billing information as well work orders for missed pick-ups, cart delivery, exchange or repair, special requests, or any issue that may arise with an account/customer.

The dispatcher monitors the residential drivers' progress on their routes throughout the day through GPS and direct radio contact with the drivers. Residential drivers leave the facility between 6:00 a.m. and 6:30 a.m., so the routes are already in progress when the dispatcher arrives at work. The dispatcher checks their location and progress. If any routes are not covered due to illness, the dispatcher will contact alternate drivers to see if they are available to cover the route or, if that has been exhausted, will consult with the operations supervisor to determine which drivers will be assigned to complete the task. Once coverage is found, the dispatcher will then prepare route information and route documents to be given to the driver(s) assigned to complete the route.

Throughout the day, drivers call the dispatcher on their radios to report any route challenges or adverse conditions. The dispatcher will assist the driver in resolving the issue, if possible, or will dispatch another driver to complete the route, if needed. For example, if a driver has a mechanical issue, the driver contacts the dispatcher about the issue and reports their current status and progress on their route. The dispatcher relays information about the issue to the maintenance department personnel and arranges for a road call vehicle to assist the driver. The dispatcher then communicates with the driver about the status of the truck and repair to determine if a replacement driver or drivers need to be sent to complete the route. If so, the dispatcher will determine what needs to be covered, and will communicate with the other drivers tasked with covering the remaining route. Out of the 62 to 65 vehicles out on routes each day, there will be at least three to five mechanical issues reported to the dispatcher each day, which may result in portions of the route needing to be assigned to other drivers for coverage. The dispatcher assigns drivers to cover these routes according to seniority and availability. The dispatcher will also contact customers if drivers need assistance on their routes, such as when a gate is locked, carts are not out at the curb, there is a missing key, or a gate is locked for a carry-out customer. The dispatcher receives the call from the driver about the issue, contacts the customer about the issue, and then reports back to the driver.

Throughout the day, the dispatcher receives electronic notifications through Info Pro about any missed pickups or other issues that customers have reported to the customer service representatives. The dispatcher communicates the issue to the assigned route driver or other drivers that might be nearby to see who is available to handle it. The dispatcher will then delegate the missed pickup, out-of-cycle pickup, or the handling of other issues to the appropriate driver to be completed by the end of the day.⁶ If a driver fails to clear a miss that's been assigned, the dispatcher reports the issue to the supervisor. The dispatcher also has a responsibility to monitor and record driver productivity measurements and report any issues,

⁶ Operations Supervisor Andrea Crowe performs these dispatch duties for the commercial and industrial routes as there is no commercial or industrial dispatcher currently employed and the position is vacant.

such a slow driver or off route driver to the supervisor. The dispatcher will also provide directions and guidance to inexperienced drivers, alternate drivers, and fill-in drivers who may be new to the route, and will also assist drivers with special requests, such as a carry out charge service (which may require dismounting the vehicle and picking up items from a backyard or opening a fence).

Drivers begin returning from their routes between 10:00 a.m. and 10:30 a.m. each day and continue to arrive throughout the day with the last driver returning by about 5:00 p.m. As they return, the dispatcher meets with them to review and collect their route paperwork. The dispatcher meets with roughly 80 drivers each day, including the drivers from all types of routes. The dispatcher goes through a list of questions that each driver is required to complete on a route coversheet, which includes the following information: whether they were wearing the appropriate uniform and branding, whether they've been injured or in an accident, whether they took their 30-minute break, whether they completed their route, and whether they experienced any hazards or adverse conditions during their route. Each driver is asked to sign the coversheet to document that they've answered correctly. The dispatcher reviews the coversheet to ensure it is complete and will ask the driver to correct any errors or omissions. The dispatcher collects the route documents from residential, commercial, and industrial drivers. In addition to the route coversheets, commercial drivers are required to initial and sign each service that has been performed for a customer and this is represented on the paperwork turned into and reviewed by the dispatcher. In their documentation, roll-off drivers must verify every activity and container they serviced for the day, including the box size, material collected and final destination of the material. Industrial drivers also turn in disposal slips to report tonnage collected. These drivers average 7 to 12 hauls a day and will turn in disposal tickers for each haul to the dispatcher. Finally, the dispatcher ensures that the drivers have completed the necessary vehicle condition reports, which are used to communicate repair and maintenance needs to the maintenance department. Once reviewed, the dispatcher gives all of the route documentation to the operations clerk.

The dispatcher also meets with the route overage auditor at the end of his route each day to review his paperwork and she takes his camera, which he uses to document any overages, contaminations or other violations he discovered during his routes. The dispatcher downloads the pictures from the route auditor's camera and uploads them into the Info Pro software to document the violations found. The route overage auditor also relays to the dispatcher any customer issues raised during his route and the dispatcher inputs these issues into Info Pro to document the issue or request service. Drivers can also take pictures with their radios to document overages, contamination or other issues they discover on route. The drivers will call the dispatcher to report the issue and the address and they will take a picture of the issue with their radios and send it to the dispatcher. The system used to relay pictures from the drivers to the dispatcher is called pdvConnect. The dispatcher accesses the picture from pdvConnect and then uploads it into Info Pro to document the issue and generate a bill to the customer for the violation or a work order for any issue that needs to be addressed, such as a container repair.

Each day, the dispatcher prepares the route sheets and documentation for the next day's routes. The operations supervisor assigns the routes for the next day, and the dispatcher prepares the route paperwork using Info Pro for each route and prints it out so that it is available for the drivers the next morning. The dispatcher also prepares routes and route documentation for cart

delivery, cart exchange and repair, out-of-cycle pickups, and bulky item collection. The dispatcher receives information from the customer service representatives about requests for these services and will prepare a route covering each request, and the route paperwork to be completed the following day. The dispatcher also makes sure that any keys needed by the residential drivers for routes the following day are available and in the route cubby for the drivers the next morning.

2. OPERATIONS CLERK

The operations clerk works in the operations department and is directly supervised by Operations Supervisor Andrea Crowe. She is primarily responsible for reviewing and inputting all of the data collected on the drivers' route coversheets and route documentation into Info Pro. The operations clerk works Monday through Friday from 8:30 a.m. to 5:30 p.m. and earns \$22.20 per hour. She works in the dispatch office at a desk in a cubicle right next to the dispatcher in the operations building and she uses a phone and a computer access to Info Pro to complete her work.

The operations clerk receives and processes all information reported by the drivers upon completion of each route. She enters data from the residential drivers' route coversheets for garbage, recycling and green waste. She also enters all the data for the front loaders, which perform garbage and recycling collection. For the industrial routes, she reviews each haul's disposal slips/weight tags to make sure they to make sure that the tonnage and materials match the work performed for each account. She is responsible for reviewing the documentation and accurately entering it into the system. Once entered, the system will activate billing to each customer based on what is entered into the system. The Employer requires that all information be input by no later than 10:00 a.m. on the day following the service.

The operations clerk fills in for the dispatcher while she is at lunch and handles her duties for an hour each day. She also assists the dispatcher with other tasks as needed during the day. She is in constant contact with the dispatcher throughout the day, receiving documentation from her and assisting her when she is backed up. She also occasionally assists her supervisor, Andrea Crowe by inputting overload and contamination charges for front-load commercial routes.

3. ROUTE OVERAGE AUDITOR

The route overage auditor works in the operations department and is supervised by Operations Supervisor Andrea Crowe. He works Monday through Friday from 2:00 a.m. to 12:00 p.m. and earns \$22 an hour with daily overtime at \$33 per hour. He works out of the dispatch office in the operations building. For the first 3 ½ to 4 ½ hours of his shift, the route overage auditor performs administrative duties and dispatch work. During this period, he works in the dispatch office and works at the dispatcher's desk; she does not arrive until later in the morning. For these duties, he uses a phone, a radio to communicate with drivers, and a laptop with access to Info Pro. The remaining hours of his day, he works in the field following residential garbage routes and documenting customer overages, contamination or other issues he witnesses on the routes. For these duties, he uses a cell phone camera,⁷ a selfie-stick, minor tools

⁷ It is unclear from the record if the route overage auditor uses the exact same radio as the drivers, which he described as a smart phone with a radio application, or if he has a different type of mobile device. In either case, the

for on-site cart repair, and he drives a pick-up truck.

The route overage auditor opens the office each morning. He has a key and turns off the alarm. He prepares coffee for the drivers, who begin arriving at the facility at 2:45 a.m. on staggered start times: front-loader drivers start at 3:00 a.m.; industrial and roll-off drivers start at 4:00 a.m.; rear-loader drivers start at 4:30 a.m.; and, residential drivers start at 5 a.m. Prior to the drivers' arrival, the route overage auditor unplugs and distributes the drivers' fully charged radios, which they use throughout the day to communicate with the dispatcher and supervisors. Drivers also use these radios to take pictures of situations they encounter during their routes to document overages, contamination, hazards or customer service issues. The route overage auditor places the radios in cubbies, which are located in the driver area on the other side of the window from the dispatch office. He also distributes route documents into drivers' cubbies and keys to the roll-off and front-load drivers' cubbies that they will need for their routes that day.⁸

Each morning, the route overage auditor makes copies of the route coversheets and documentation turned in by the drivers for all of the routes run the previous day. He scans the copies and then e-mails them to the operations supervisors. On Friday mornings, he spends an extra hour in the office distributing checks and paycheck stubs to drivers' cubbies and any other documentation that needs to go to the drivers, such as DMV forms or reports.

While he is in the office each morning, the route overage auditor performs dispatcher duties since the dispatcher does not report to work until later in the morning. He does his work until he departs for his own routes, which is usually about 5:30 a.m. or 6:30 a.m. on Fridays. He works each morning at the dispatcher's desk and answers calls from drivers who call in sick or late. He relays this information to the operations supervisor and calls alternate drivers by seniority to find coverage. He checks the list of trucks running each day and puts any trucks that are not running on the out of service lists. He also takes calls from drivers on the radio if they have any issues while out on their routes. Drivers will call him to advise him of issues, such as when they can't access a box that requires service, or they break down or are having mechanical difficulties. The route overage auditor will relay this message to the appropriate supervisor to get the drivers assistance. He also takes calls from drivers during the day if they don't realize he's left the office yet or if they can't reach the dispatcher or a supervisor.

Prior to leaving the office, the route overage auditor uses his computer and the Info Pro computer system to plan his routes for the day.⁹ He prints his own route paperwork to take in the

drivers and the route overage auditor all have mobile devices with photo and radio capability and are able to communicate with each other through these devices.

⁸ The route overage auditor testified that a few weeks prior to the hearing the operations supervisor Wayne Bonifante began reporting to work at 3:00 a.m. and assisting with his duties of passing out radios to the drivers and supporting them in getting on the road. There was no testimony about why this began, or if this is anticipated to continue.

⁹ The route overage auditor testified that he also prints routes for recycle auditors and has trained them on documenting overages so that they can have something to do "in case it rains." Since the General Manager did not identify any recycling auditor positions within the Employer's organization, it appears that this testimony may be referring to recycling coordinators, who are primarily responsible for educating customers on recycling and promoting recycling and who perform customer site audits in their regular day-to-day duties. With this limited testimony, it is unclear if they actually perform similar duties as the route overage auditor with any regularity or frequency.

field. He has discretion in deciding which routes to audit each day but he follows the same routes used by the drivers. He audits routes sequentially to ensure that he audits all of the routes, but he may also add routes out of sequence that drivers are reporting to have high overage rates. He drives two to four routes each day.

The route overage auditor usually leaves the facility by 5:30 a.m. on Mondays through Thursdays, and by 6:30 a.m. on Fridays. He uses an Employer pick-up truck and follows each route he has planned for the day. On the route, he will look for any issues with the carts or materials left out for pickup. If he sees an overfull cart, which is deemed an overage, he will take a photo of the cart and document the overage. If he sees material in a cart that does not belong, such as garbage in a recycling or green waste cart, he will take a picture and document this as a contaminated cart. During his routes, he interacts with customers that he encounters or who have questions about what he is doing or raise issues with their service. He may manually repair carts during his route or report carts that need more extensive repair or exchange. He may also get calls from drivers with reports of overages or contamination that they discover on route.

At the conclusion of his routes, he returns to the office and provides his camera and route documentation to the dispatcher, who downloads the pictures. His route paperwork is then routed to the operations clerk who enters the data he reports into Info Pro and generates billing to the customers for violations found. His violations generate approximately \$200,000 annually in additional customer charges. According to the General Manager's testimony, this position was created approximately four to five years ago to ease the burdens on and reduce distractions for the drivers who also document overages, contamination, and other issues that may result in additional charges.

BOARD LAW

An *Armour-Globe* self-determination election allows employees who share a community of interest with a unit of already-represented employees to vote on whether to join the existing bargaining unit. *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (1st Cir. 1990); *Armour & Co.*, *supra*; *Globe Machine & Stamping Co.*, *supra*. The Board has held that a self-determination election is the proper method by which an incumbent union may add unrepresented employees to its existing unit if the employees sought to be included share a community of interest with unit employees and "constitute an identifiable, distinct segment so as to constitute an appropriate voting group." *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990) (citing *Capital Cities Broadcasting Corp.*, 194 NLRB 1063 (1972)). The petitioned-for employees need not constitute a separate appropriate unit by themselves in order to be added to an existing unit. *Id.*

APPLICATION OF BOARD LAW TO THIS CASE

1. Identifiable and Distinct Group

When a petitioner seeks an *Armour-Globe* election, the first consideration is whether the voting group sought is an identifiable, distinct segment of the workforce. *St. Vincent Charity Medical Center*, 357 NLRB 854, 855 (2011) (citing *Warner-Lambert*, 298 NLRB at 995). Whether a voting group is an identifiable, distinct segment is not the same question as whether the voting group constitutes an appropriate unit. *Id.* Instead, the identifiable and distinct analysis is applied to determine whether the voting group sought unduly fragments the workforce

or constitutes an “arbitrary segment of unrepresented employees.” See *Capital Cities Broadcasting Corp.*, 194 NLRB at 1063. The Board will not approve of a voting group that is arbitrary or random. See *St. Vincent Charity Medical Center*, 357 NLRB 854, 855 (2011) (citing *Capital Cities Broadcasting*, 194 NLRB at 1063).

Based on the record evidence, I find that the petitioned-for employees constitute an identifiable, distinct segment of the Employer’s unrepresented employees. They work within a single department, have the same direct supervision, and are the only remaining unrepresented non-supervisory employees working within this department. While they are three different classifications with distinct duties, they spend substantial amounts of their work time engaged in similar duties, working in the same office with the same equipment, working with and handling the same paperwork, performing related functions within the Employer’s operation, including generating and processing of route paperwork, documenting and inputting data for additional customer billing, and providing support and assistance to drivers. I find that the selection of these three positions to be added to the unit is not arbitrary or random and finding them to be a distinct voting group would not fragment the workforce. I, therefore, find the voting group appropriate.

2. Community of Interest

In addition to being an identifiable district group, the petitioned-for group in an *Armour-Globe* election must also share a community of interest with unit employees to whom they would be added. *Warner-Lambert Co.*, 298 NLRB supra at 993, 995 (1990) (citing *Capital Cities Broadcasting Corp.*, 194 NLRB 1063 (1972)). As the Board held in *PCC Structural*s, 365 NLRB No. 160, slip op. at 6 (2017), examining the community of interest between groups of employees involves an inquiry into whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *Id.*, slip op. at 13 (citing *United Operations, Inc.*, 338 NLRB 123 (2002)). The Board also considers the bargaining history of the parties. *Buffalo Broadcasting Co.*, 242 NLRB 1105, 1106 fn. 2 (1979).¹⁰

Departmental Organization

The petitioned-for employees work in the operations unit under Operations Manager Alexis Mack along with the vast majority of the existing bargaining unit employees. In fact,

¹⁰ Given that this is an *Armour-Globe* case, I have primarily analyzed the facts pursuant to the *Warner-Lambert* standard discussed above rather than under the Board’s more recent decision in *PCC Structural*s, Inc., 365 NLRB No. 160 (2017), which overruled *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011). The Board has indicated that *Specialty Healthcare* was not the correct standard for determining whether an *Armour-Globe* self-determination election was appropriate, and this remains true after *PCC Structural*s. See *Republic Services of Southern Nevada*, 365 NLRB No. 145, slip op. at 1, fn. 1 (2017); *South Texas Project Nuclear Operating Company*, 2014 WL 5465003 (footnote of Member Johnson finding it inappropriate to apply *Specialty Healthcare* to determine whether a self-determination election is appropriate). However, I have considered *PCC Structural*s and its progeny insofar as they address general community of interest principles applicable in any representation case, including *Armour-Globe* cases.

the three petitioned-for employees are the only non-supervisory employees working in that department that are not already represented by the Petitioner. Moreover, only two of the existing bargaining unit employees are classified in a department other than the operations department. As such, I find this factor weighs heavily in favor of finding a community of interest between the petitioned-for employees and the existing bargaining unit.

Nature of Employee Skills and Training

For this factor, the Board analyzes whether employees have similar requirements to obtain employment, if they have similar job descriptions or licensure requirements, whether they participate in the same Employer training programs, or if they use similar equipment. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penny Co., Inc.*, 328 NLRB 766 (1999); *Brand Precision Serv.*, 313 NLRB 657 (1994).

The operations clerk, route overage auditor, container delivery employee and container washer positions are all entry level positions and do not require any particular skills or experience for hire. The drivers and drivers' helpers are required to have commercial drivers' licenses. None of the other positions are required to have a commercial driver's license, however, the container welder, container delivery employee and route overage auditor drive trucks for their work, so they would need a standard drivers' license. The container welder and tire repair employee are required to have three years of experience, but do not need to have certifications at the time of hire. However, they are required to obtain certification in welding and tire repair, respectively, if they do not have it at the time of hire and will receive training in these areas from the Employer, which the other bargaining unit employees and petition-for employees do not receive. The dispatcher is required to have a minimum of two years' industry knowledge in dispatching or trucking facility functions and customer service experience.¹¹

The dispatcher receives Employer provided training in customer service and dispatching duties, procedures, and policies, which includes training on the software program, reading accounts, and understanding what data is important and needs to be communicated with drivers. The route overage auditor also receives customer service training, training regarding safety and operations procedures, and training regarding blight and the prevention of debris getting into the wastewater system. The bargaining unit employees are required to attend safety meetings where they are presumably trained in safety procedures, as well. The drivers' trucks have fire extinguishers and they receive training for using this equipment.¹² The container welder, container delivery, and container washer employees also receive the same Employer provided customer service training due to their contact with customers in the field.¹³

The dispatcher, operations clerk, and route overage auditor use phones, computers and the software program Info Pro to perform their work, which the existing bargaining unit members do not use. The dispatcher and route overage auditor utilize radios, as do all of the existing bargaining unit members. The drivers drive heavy-duty commercial vehicles. The container welder, container delivery employee and route overage auditor drive lighter duty

¹¹ The incumbent dispatcher had experience as a scale house attendant at a recycling facility prior to being hired.

¹² The record is silent as to whether the lighter-duty trucks used by the container employees and the route overage auditor are equipped with fire extinguishers or if they receive training in this area.

¹³ There is no evidence in the record regarding whether drivers and helpers receive training in customer service.

trucks. The route overage auditor, container delivery employee and the container washer use basic hand tools (i.e. wrenches, pliers, screwdrivers) to perform small container repairs; these mechanical tools are also used by the tire repair employee and the container welder. The container welder also uses specialized welding tools (fabrication tools, wire feed and MIG welders, straight rod, cutting torches, and chop saws), which no other employees use. Similarly, the tire repair employee uses specialized tire repair tools (air guns, tire hammer, tire gauges, compressed air inflation and tread-depth gauges), which no other employees use.

While there are some similarities in the job requirements, skills, training and equipment used by the petitioned-for employees and bargaining unit employees, there are also significant differences. In light of this, I find that this factor neutral in assessing the community of interest between the petitioned-for employees and the existing bargaining unit employees.

Job Functions and Work

This factor examines whether employees can be distinguished from one another on the basis of job functions or duties. If they cannot be distinguished, this factor weighs in favor of finding a community of interest. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that employees work together as a crew, support a finding of similarity of functions.

This factor weighs against finding a community of interest between the petitioned-for employees and the existing bargaining unit. The petitioned-for employees and the existing bargaining unit employees perform distinctly different job functions and work duties during their workdays. The drivers and helpers spend their workdays in the field collecting and transporting waste materials in heavy-duty trucks. The container welder, container delivery, and container washer spend their workdays engaged in the maintenance, repair, and transportation of containers. The tire repair employee spends each day repairing or replacing tires on the Employer's fleet of vehicles. The dispatcher and operations clerk spend their workdays performing administrative and dispatching duties. The route overage auditor performs some administrative duties, some dispatching duties, and some container repair duties each day. He also spends a significant period of his day driving routes, but he does not engage in the collection or transport of any materials. Aside from the driving and the container repairs done by the route overage auditor and the container employees, there is virtually no overlap in duties and work of the petitioned-for employees and the existing bargaining unit.

Degree of Functional Integration

Functional integration refers to when employees' work constitutes integral elements of an employer's production process or business. Functional integration exists when employees in a unit sought by a union work on different phases of the same product or as a group provides a service. Another example of functional integration is when the Employer's workflow involves all employees in a unit sought by a union. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *See Transerv Systems*, 311 NLRB 766 (1993).

On the other hand, if functional integration does not result in contact among employees in the unit sought by a union, the existence of functional integration has less weight.

I find that the record supports a finding that a substantial degree of functional integration exists between the petitioned-for employees and the existing bargaining unit employees. The dispatcher and route overage auditor have regular daily contact with the drivers who form the vast majority of employees in the existing bargaining unit. The dispatcher prepares the drivers' route documentation each day and then meets with them at the end of each day to review the paperwork. She is also in constant contact with the drivers throughout the day via radio and she is their primary contact for issues that arise on their routes during the day. She testified that she is communicating with drivers for 90% of her workday. The operations clerk fills in for the dispatcher for at least an hour each day and takes over her duties communicating with drivers while the dispatcher is at lunch or when she needs help. In addition, the primary responsibility of the operations clerk is to review and input the information that drivers report on their daily route documentation in order to clear the work and generate customer billing. Similarly, the route overage auditor performs dispatcher duties for several hours and taking calls from drivers who are going to be out or who experience issues on their routes. He also prepares coffee, paperwork, and radios for the drivers each morning. When he is not performing these duties, the route overage auditor spends his remaining hours driving routes ahead of the drivers checking for overages, contamination and other issues on the routes, which relieves the drivers from having the responsibility to do so.¹⁴ During these hours, he also communicates with drivers occasionally about overages or issues they might experience on route if they cannot reach a supervisor or dispatcher. Thus, the petitioned-for employees and the bargaining unit positions communicate with each other regularly throughout the course of the day in order to get the department's collection work accomplished, they all handle the route paperwork that is used to document and bill for the department's work, each position is dependent upon the work of the other in order to fulfill their own responsibilities, and they are all essential to the function of the department's work.

Contact and Interchange

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange "may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills." *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). The record reflects no incidences of permanent transfer between any of the petitioned-for positions and bargaining unit positions. However, there is evidence that bargaining unit employees have been temporarily assigned to perform route overage auditing work when needed to accommodate injuries or limited work duty. The record reflects that six bargaining unit employees have been assigned to perform route overage auditor duties in the past two years during periods of light duty. However, the record does not reflect how long these light-duty assignments lasted for each employee.

Another important consideration in this factor is whether there is evidence of work-

¹⁴ The General Manager testified that the route overage auditor position was created four or five years ago as a way to reduce driver distractions and by putting the route overage auditor in front of them on their routes, he was taking the responsibility away from the driver of having to report and document overages on their routes.

related contact between the petitioned-for employees and the bargaining unit employees. See, e.g., *The Boeing Company*, 368 NLRB No. 67, slip op. at 5 (2019) (“contact is the only factor that unreservedly favors the petitioned-for unit”). As described above, there is substantial contact between the bargaining unit employees, particularly the bargaining unit drivers and the petitioned-for employees. The route overage auditor has face-to-face contact and radio contact with them in the mornings. The dispatcher has frequent and regular radio contact with them throughout the day and face-to-face contact every day at the end of their routes. The operations clerk also has radio contact with them each day during the one-hour lunch period that she covers for the dispatcher and as needed at other times.

On balance, I find that the frequent and regular of contact between the petitioned-for employees and bargaining unit employees strongly favors a finding of community of interest, which is only somewhat undermined by the nominal evidence of interchange.

Terms and Conditions of Employment

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (for example hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment that might be described in an employee handbook. See, e.g., *Overnite Trans. Co.*, 322 NLRB 347 (1996).

The existing bargaining unit classifications are paid hourly rates ranging from \$18.75 per hour to \$35.33. The petitioned-for employees are also paid hourly at rates of \$26.30, \$22.20 and \$22.00, which fall within the range of the existing unit’s contractual hourly rates. Both groups are eligible for overtime pay at time and a half.¹⁵ The record reflects that the unit drivers regularly earn roughly five to 10 hours of overtime each week and the route overage auditor testified that he worked 10-hour days, which equates to 10 hours of overtime per week. The operations clerk does not regularly work overtime and the record is silent regarding any overtime worked by the dispatcher. All of the employees are paid on a weekly basis.

There are a multitude of different shifts in the operations department. The route overage auditor testified that he works from 2:00 a.m. to 12:00 p.m. each day. The front-loader drivers start at 3:00 a.m.; industrial and roll-off box drivers start at 4:00 a.m.; rear-loader drivers start at 4:30 a.m.; and, residential drivers start at 5:00 a.m. The drivers’ shifts end upon completion of their route and the record reflects that they return to the Facility between the hours of 10:00 a.m. and 5:00 p.m. The dispatcher and operations clerk work from 8:30 to 5:30 p.m. Thus, the petitioned-for employees and the existing bargaining unit work similar hours that overlap with one another.

The petitioned-for employees receive Employer-provided benefits, including health insurance coverage, dental coverage, a 401(k) plan, PTO, sick, and vacation leave. The existing bargaining unit employees receive the same type of benefits through the Agreement, although the health and welfare and pension benefits are through Teamster plans. All of the employees are

¹⁵ The General Manager testified that drivers are eligible for time and a half on Saturdays and double time on Sundays, but there is no evidence regarding whether the bargaining unit employees work on Saturday or Sunday with any frequency, if ever. The Agreement indicates that work shifts are generally Monday through Friday.

subject to the same employee handbook and receive support from the same Human Resources department. While the record reflects that the employees receive similar types of benefits, the record does not include the employee handbook or any specific details regarding the costs of the benefits to employees, accrual rates, or any other details that would allow for a detailed comparison of these benefits. However, I note that there is no evidence in the record regarding any of the plans or benefits being more beneficial for either group.

All bargaining unit employees and the route overage auditor are required to wear Employer issued Republic Services branded uniforms with built-in visibility safety reflectors for use in the field, which can include overalls, pants, shorts, shirt, jacket, vest, gloves, beanie or company hat in the company colors. Drivers are required to wear steel-toe boots and are issued hard hats for use at disposal sites. The dispatcher and operations clerk are not required to wear uniforms but are expected to wear business casual attire and have been given Republic Services branded polo shirts.

The petitioned-for employees and existing bargaining unit employees work in the same work situs, with the dispatch office/area being adjacent to the maintenance area and separated by a window where the two groups of employees can talk to one another. All of the employees clock in and out at the same timeclock, which is located in the area near the driver cubbies just outside of the dispatch office. There is a single lunchroom at the facility which is available to all employees, although the route overage auditor and most of the drivers typically eat in the field. There is a single locker room at the Facility, where the route overage auditor and other bargaining unit employees turn in their uniforms for Employer-provided laundering. All employees use the same employee parking lot to park their personal vehicles while at work.

With the above factors in mind, I find that the commonality of wages, hours and working conditions as between the petitioned-for employees and the existing bargaining unit supports the existence of a community of interest between them.

Common Supervision

Another community-of-interest factor is whether the employees are commonly supervised. In examining supervision, most important is the identity of employees' supervisors who have the authority to hire, to fire or to discipline employees (or effectively recommend those actions) or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work and providing guidance on a day-to-day basis. *NCR Corporation*, 236 NLRB 215 (1978).

In this case, the record is clear that the petitioned-for employees share common direct supervisor with other employees in the bargaining unit. All three of the petitioned-for employees are directly supervised by Operations Supervisor Andrea Crowe, who also directly supervises the seven box/industrial drivers in the bargaining unit. In addition, since the petitioned-for employees and all but two of the bargaining unit positions work out of the operations department, nearly all of the employees fall under the management of Operations Manager Alexis Mack. As such, I find that this factor weighs heavily in favor of finding a shared community of interest between the petitioned-for employees and the bargaining unit employees.

Bargaining History

The record reflects that the Petitioner has represented employees of the Employer for upwards of 30 years. The Petitioner currently represents employees in two separate bargaining units, the recycling division and the garbage division and there is no evidence in the record that the units were ever combined or that the existing garbage division bargaining unit has changed since its original recognition or certification. The Machinists Union represents a bargaining unit of employees working in the maintenance department, and OPEIU, Local 29 represents the customer service representatives. The petitioned-for employees are unrepresented, and the record shows no history of representation for the petitioned-for employees in a different unit or by a different union. I also note that no union seeks to represent them separately or in a different unit.¹⁶

At hearing, the Employer proffered two arguments against placement of the dispatcher in the garbage division bargaining unit, both of which I find unpersuasive. First, the Employer argues that since she performs dispatching duties for both the garbage and recycling drivers, placement of the dispatcher in the garbage division unit would create a conflict of interest. The Employer suggests that because of a code of “brotherhood” the dispatcher might show allegiance to the garbage division unit over the recycling division unit and might not report driver misconduct.¹⁷ This argument is wholly speculative and the Employer cites no legal authority to support its claim. I also note that the separately represented recycling drivers drive different routes under separate supervision from the bargaining unit drivers. There is no contention that the dispatcher is a statutory supervisor or that she could impact the drivers’ terms and conditions of employment based on some assumed misplaced loyalty. While she is involved in finding coverage for missed or unfinished routes, the record reflects that the assignments are based on driver seniority and availability, and route reassignments between units are made either by the supervisor or with the supervisor’s approval. Finally, I find equally unpersuasive the Employer’s second argument that the Board traditionally does not put dispatchers into a bargaining unit with drivers. In support of this argument, the Employer cites *St. Johns Associates Inc.*, 166 NLRB 287, 288 (1967) and *D&T Limousine*, 1998 Westlaw 1984896 (1998). However, neither case stands for this proposition. Instead, both cases involve petitions that did not seek to include dispatchers and drivers in the same unit, and both cases found that dispatchers need not be included in the unit of drivers in order to be found appropriate-- not that dispatchers should be excluded from a drivers unit in order for the unit to be found appropriate. Indeed, Board law is replete with examples of cases in which the Board found mixed dispatcher and driver units appropriate and even some where the Board concluded that dispatchers must be included in a unit of drivers in order for the unit to be found appropriate. See e.g. *Vangas, Inc.*, 167 NLRB 805, 806 (1967); *CPA Trucking*, 185 NLRB No. 79 (1970); *Orleans Transportation Svc.*, 217 NLRB 483 (1975); *Yellow Cab*, 131 NLRB 239 (1961); *Modern Heat & Fuel*, 89 NLRB 1345

¹⁶ On January 7, 2020, OPEIU, Local 29, which represents the Employer’s customer service representatives, filed a petition in Case 32-RC-254227 seeking to represent two “clerical dispatchers,” but subsequently withdrew its petition and did not intervene in this matter.

¹⁷ The Employer raised a single incident of the dispatcher reporting a driver for personal misconduct toward her that resulted in the driver’s termination and suggested that she might not report such misconduct in the future if they were both represented by the Petitioner. However, there is no claim that the dispatcher is a statutory supervisor or that she was required as part of her job duties to report personal misconduct toward her in the first instance.

(1950).

In light of the above, I find that the petitioned-for employees share a community of interest with the existing garbage division bargaining unit. While they are clearly engaged in different work with distinct duties, this factor is greatly outweighed by the substantial community of interest they share by working in the same department, under shared supervision, with similar terms and conditions of employment while performing functionally integrated work with frequent and regular contact with one another. The minimal interchange, the variances in skills and training, and inconsequential bargaining history do not undermine a finding of community of interest among the two groups.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of Section 2(6), (7), and (14) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹⁸
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a voting group appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time dispatchers, operations clerks, and route overage auditors employed by the Employer at its facility located at 1A Parr Blvd., Richmond, California; excluding employees represented by a labor organization, guards, and supervisors as defined in the Act.

If a majority of the valid ballots in the election are cast for the Petitioner, the employees in the above appropriate voting group will be deemed to have indicated their desire to be included in the existing unit of employees currently represented by the Petitioner, and it shall bargain for those employees as part of that unit. If a majority of the valid ballots are cast against representation, the employees will be deemed to have indicated their desire to remain unrepresented, and I will issue a certification of results of election to that effect.

¹⁸ The parties stipulated that the Employer, a California corporation with places of business located in Richmond, California, is engaged in the business of non-hazardous solid waste management and that during the 12 months preceding the hearing, the Employer derived annual gross revenues in excess of \$500,000, and during that same period purchased and received goods valued in excess of \$5,000 which originated outside the State of California.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting group found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Petitioner, Teamsters Union, Local No. 315. If a majority of valid ballots are cast for representation by the Petitioner, they will be taken to have indicated the employees' desire to be included in the existing garbage division bargaining unit currently represented by the Petitioner. If a majority of the valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

A. Election Details

The election will be held on Tuesday, February 25, 2020, from 5:00 a.m. to 5:15 a.m. and from 9:00 a.m. to 9:15 a.m. at the Employer's facility located at 1A Parr Blvd., Richmond, CA 94801.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending February 8, 2020, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **February 13, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

The list must be filed electronically with the Region and served electronically on the other parties named in this decision. The list must be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. A party filing a request for review must serve a copy of the request on the other parties. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Oakland, California this 11th day of February 2020.

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board
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